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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ORANGE

MONICA FERNANDEZ, as an individual; EVA ZAVALA, as an individual; and on behalf of all others similarly situated,

Plaintiffs,

v.

MICHAEL NICHOLAS DESIGNS, a California corporation; and DOES 1 through 100, inclusive,

Defendants.

Case No. 30-2023-01362788-CU-OE-CXC

[*Assigned for all purposes to the Hon. Layne H. Melzer, Dept. CX102*]

PLAINTIFFS' NOTICE OF MOTION AND MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT, CLASS REPRESENTATIVES' ENHANCEMENT, AND ATTORNEYS' FEES AND COSTS; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF

Date: August 27, 2026
Time: 2:00 p.m.
Dept.: CX102

Action Filed: November 17, 2023
Trial Date: Not Set

TO THE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that pursuant to Rule 3.769 of the California Rules of Court, on August 27, 2026 at 2:00 p.m. in Department CX102 of the above-entitled Court, located at 751 West Santa Ana Blvd., Santa Ana, California 92701, Plaintiffs Monica Fernandez and Eva Zavala (together, "Plaintiffs"), individually and on behalf of a class of similarly situated individuals, will and hereby do move this Court for:

1. Confirmation of the certification of the Settlement Class for settlement purposes under Section 382 of the California Code of Civil Procedure;
2. Confirmation of the appointment of Plaintiff Monica Fernandez and Plaintiff Eva Zavala as Class Representatives for settlement purposes;
3. Confirmation of the appointment of Scott M. Lidman, Milan Moore, and Tiara Gose-Hardy of Lidman Law, APC, and Paul Haines of Haines Law Group, APC, as Class Counsel for settlement purposes;
4. The granting of final approval of the Class Action and PAGA Settlement Agreement and Class Notice, and its Amendment ("Settlement");
5. Approval of an award of $257,786.67 in attorneys' fees to Class Counsel;
6. Approval of an award of $11,932.01 in costs to Class Counsel;
7. Approval of an award of $13,500.00 in costs to Phoenix Settlement Administrators for its settlement administration services;
8. Approval of a representative payment of $7,500.00 to Plaintiff Monica Fernandez for her services as Class Representative;
9. Approval of a representative payment of $7,500.00 to Plaintiff Eva Zavala for her services as Class Representative;
10. Approval an award of $40,000.00 to the Labor & Workforce Development Agency ("LWDA") and Aggrieved Employees; and
11. The entering of final judgment in the form of the [Proposed] Order of Final Approval of Class Action Settlement and Final Judgment filed concurrently herewith.

This Motion is based on this notice of motion, the attached memorandum of points and authorities attached hereto, the declarations of Milan Moore, Scott M. Lidman, Tiara Gose-Hardy, Paul K. Haines, Plaintiffs Monica Fernandez and Eva Zavala[1], and Mayra Gonzalez of Phoenix Settlement Administrators, and the exhibits attached thereto, the pleadings and other papers filed in this action, and on any further oral or documentary evidence or argument presented at the time of hearing.

Dated: August 5, 2026

Respectfully Submitted,
LIDMAN LAW, APC

By: ______________________
Milan Moore

Attorneys for Plaintiffs
MONICA FERNANDEZ and EVA ZAVALA

[1] The declarations of Plaintiffs Monica Fernandez and Eva Zavala were originally filed with this Court in connection with the Motion for Preliminary Approval. For the convenience of the Court, Plaintiffs have re-filed their declarations with the instant Motion.

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff Monica Fernandez and Plaintiff Eva Zavala (together, "Plaintiffs") submit this memorandum of points and authorities in support of the motion for final approval of the class action settlement (the "Settlement") with Defendants Michael Nicholas Designs, LLC and Michael Nicholas Designs, Inc. (collectively, "Defendants") on behalf of the Settlement Class defined as: "all individuals who worked as non-exempt employees of Defendants Michael Nicholas Designs, LLC and/or Michael Nicholas Designs, Inc. in California at any time during the Class Period."

In this non-reversionary Settlement, the average settlement payment is approximately **$473.49** to each participating Settlement Class Member. This is a favorable resolution of the highly disputed wage and hour claims in this case and considering the significant litigation risks that Plaintiffs faced. Since this Court granted preliminary approval on March 3, 2026, nothing has changed to impact the propriety, fairness, adequacy and reasonableness of the Settlement. In addition, after receiving notice of the Settlement and of their projected Settlement payments, only two (2) Settlement Class members have opted out of the Settlement, not a single Class Member has submitted an objection to any portion of the Settlement, and there have been no disputes.

As explained below, the Court should grant Plaintiffs' motion in its entirety because: (1) the Class continues to meet the requirements for class certification for settlement purposes under Code of Civil Procedure section 382; (2) the Settlement warrants final approval because it is a fair, adequate, and reasonable compromise of the disputed claims in this case; and (3) the amounts requested for Class Counsel's attorneys' fees and costs, Plaintiffs' Class Representatives Enhancement, payment to the Labor Workforce Development Agency ("LWDA") and Aggrieved Employees, and settlement administration costs are all fair, adequate, and reasonable. In light of the foregoing, Plaintiffs respectfully request that this Court enter the [Proposed] Order of Final Approval of Class Action Settlement and Final Judgment submitted concurrently herewith.

II. FACTUAL AND PROCEDURAL BACKGROUND

On November 17, 2023, Plaintiff Fernandez filed a putative class action complaint against Defendant Michael Nicholas Designs ("Michael Nicholas Designs, Inc") in Orange County Superior

Court. Declaration of Milan Moore ("Moore Decl."), ¶ 7. On November 17, 2023, Plaintiff Fernandez submitted a letter to the California Labor & Workforce Development Agency ("LWDA") and Defendant Michael Nicholas Designs advising of her intention of filing a PAGA claim based on the Labor Code violations alleged in her operative complaint. *Id*. On January 22, 2024, Plaintiff Fernandez filed a First Amended Complaint ("FAC") adding a cause of action for penalties under the PAGA. *Id*.

On July 18, 2024, Plaintiff Zavala submitted a letter to the LWDA and Defendant Michael Nicholas Designs advising of her intention of filing a PAGA claim based on the Labor Code violations alleged within the letter. Moore Decl., ¶ 8.

Plaintiff Fernandez and Defendant Michael Nicholas Designs, Inc. entered a stipulation allowing Plaintiff Fernandez leave to amend her FAC to add Eva Zavala as a named plaintiff. Moore Decl., ¶ 9. On August 26, 2024, Plaintiff Fernandez filed a Second Amended Complaint ("SAC") adding Plaintiff Zavala. *Id*.

On February 4, 2025, Plaintiffs filed an Amendment to Complaint adding Michael Nicholas Designs, LLC as a named defendant. Moore Decl., ¶ 10.

Therefore, Plaintiffs allege that Defendants: (1) failed to pay all overtime wages owed; (2) failed to pay all minimum wages owed; (3) failed to provide meal periods; (4) failed to authorize and permit all rest periods; (5) failed to provide accurate, itemized wage statements; (6) failed to pay all wages owed upon termination; (7) engaged in unfair competition; and (8) are liable for civil penalties under the PAGA. Moore Decl., ¶ 11.

A. <u>Plaintiffs' Claims</u>

As explained in detail in the Motion for Preliminary Approval, Plaintiffs' primary theories of liability are related to Defendants' alleged unlawful wage and timekeeping policies and practices. Moore Decl., ¶¶ 12-23. Specifically, Plaintiffs allege that they and other non-exempt employees were required to wait in line to be able to clock in at 6:30 a.m., often times waiting in line up to 30 minutes before clocking in. Moore Decl., ¶ 12. They further allege that Defendants did not compensate their non-exempt employees for this time. *Id*. Accordingly, Plaintiffs contend that Defendants did not compensate Plaintiffs and other non-exempt employees for all minimum and overtime wages earned. *Id*.

Plaintiffs further allege that they and the Settlement Class Members were not provided with all legally-compliant meal periods beginning before the end of the fifth hour of work and that Defendants did not require them to clock in and out for meal periods. Moore Decl., ¶ 14. Further, Plaintiffs allege that Defendants used a bell signaling system that rang twice, exactly 30 minutes apart, and Plaintiffs and other non-exempt employees had to be back at their workstations at the time of the second bell resulting in short or otherwise unlawful meal periods. *Id*.

Plaintiffs allege that they and Settlement Class Members were also not authorized and permitted to take all required rest periods due to Defendants' rest period practices. Moore Decl., ¶ 16. Specifically, Plaintiffs contend that due to work demands and the bell signaling system, non-exempt employees were not authorized and permitted to take duty-free net 10-minute rest periods. *Id*.

Plaintiffs further allege that Defendants issued inaccurate wage statements in violation of Labor Code § 226 as a result of the alleged unpaid wages and unpaid meal and rest period premium wages described above. Moore Decl., ¶ 18. Specifically, Plaintiffs contend that this conduct violated Labor Code § 226(a) because the wage statements issued to Settlement Class Members did not include all hours worked. *Id*.

Plaintiffs allege that Defendants are also liable for waiting time penalties under Labor Code section 203 as a result of their failure to pay all wages at the time of separation of employment. Moore Decl., ¶ 20.

Plaintiffs also seek civil penalties under the PAGA as a result of the foregoing alleged Labor Code violations. Moore Decl., ¶ 22. As explained *infra* and in Plaintiffs' Motion for Preliminary Approval, Defendants deny Plaintiffs' claims and assert several affirmative defenses, both on the merits and with respect to class certification.

B. Discovery, Mediation and Settlement

Here, Plaintiffs and Defendants (collectively, the "Parties") engaged in informal discovery. Moore Decl., ¶ 25. After agreeing to participate in private mediation, Defendants informally produced a 20% sampling of timekeeping and payroll data for the putative class, as well as their wage and hour policies and other documents and information relevant to the claims alleged. *Id*.

After the detailed review of the timekeeping and payroll records and Defendants' wage and hour policies, Class Counsel drew on their extensive experience in similar cases to assess the strengths and weaknesses of Plaintiffs' case. *Id*. This informal discovery allowed the Parties to assess the merits and value of Plaintiffs' claims and Defendants' defenses thereto, if a settlement could not be reached. *Id*.

On January 30, 2025, a mediation was held with Marc J. Feder, Esq., a well-respected wage and hour class action mediator. Moore Decl., ¶ 26. During mediation, the Parties vigorously debated their opposing legal positions, the likelihood of certification of Plaintiffs' claims, and the legal basis for the claims and defenses. *Id*. Ultimately, the Parties agreed to the mediator's proposal and signed a Memorandum of Understanding. *Id*. In the months that followed, the Parties finalized the terms of settlement and executed the Class Action and PAGA Settlement Agreement and Class Notice ("Settlement"). *Id*.

C. <u>Preliminary Approval of Settlement</u>

Plaintiffs submitted the Settlement to the Court and the LWDA with their Motion for Preliminary Approval on May 23, 2025. Moore Decl., ¶ 27. On October 30, 2025, the Court required the Parties to amend the settlement agreement and submit a supplemental brief. *Id*. The Parties executed a First Amendment to Class Action and PAGA Settlement Agreement and submitted the amendment to the Court and LWDA with supplemental briefing on January 26, 2026. *Id*.

On March 3, 2026, the Court issued an order Granting Preliminary Approval of the Settlement. Moore Decl., ¶ 28; Exh. A. Plaintiffs submitted the Order Granting Preliminary Approval to the LWDA on March 25, 2026. *Id*.; Exh. B. On May 11, 2026, per the Parties' stipulation and request, the Court amended the Order Granting Preliminary Approval correcting the Class and PAGA Periods to accurately reflect the end of the Class and PAGA Periods per the Settlement. Moore Decl., ¶ 29; Exh. C. The Further Amended Order Granting Preliminary Approval was submitted to the LWDA on May 12, 2026. Moore Decl., ¶ 33; Exh. D.

On May 14, 2026, the Court-approved notice packet (consisting of the *Court Approved Notice of Class Action Settlement and Hearing Date for Final Court Approval, Workweek Challenge Form, Request for Exclusion Form,* and *Objection Form*) was sent to Settlement Class Members in English and Spanish, and the Settlement Class members had until July 13, 2026 to submit disputes, objections, and/or requests for exclusion. *See* Declaration of Mayra Gonzalez of Phoenix ("Gonzalez Decl."), ¶¶ 5, 7-9. As of the Response Deadline, there have been only two (2) requests for exclusion, no objections, and no disputes received. *Id.*, ¶¶ 7-9. Plaintiffs now respectfully submit the Settlement for this Court's final approval.

III. SUMMARY OF THE SETTLEMENT AND NOTICE PROCESS

A. Settlement Class Definition

The Settlement Class encompasses "all individuals who worked as non-exempt employees of Defendants Michael Nicholas Designs, LLC and/or Michael Nicholas Designs, Inc. in California at any time during the Class Period." Settlement, ¶ 1.5. The Class Period is the period of time starting on March 23, 2021 and ending on June 30, 2025. Settlement, ¶ 1.12.

B. Escalator Clause

To protect the value and integrity of the Settlement, the Parties included an escalator clause in the Settlement, which states, "Based on their records, Defendants estimate that there are approximately 77,336 Workweeks worked by Class Members through January 30, 2025. If the actual number of workweeks during the Class Period increases by more than 12% above 77,336 (*i.e.*, if there are 86,616 or more workweeks during the Class Period), Defendants agree to increase the Gross Settlement Amount on a proportional percentage basis (*i.e.*, if there was a 13% increase in the number workweeks during the Class Period, Defendants would agree to increase the Gross Settlement Amount by 13%), or at Defendants' option, the Class Period and PAGA Period shall end as of the last date on which the actual workweeks does not exceed 77,336 by more than 12% (*i.e.*, did not exceed more than 86,616)." Settlement, ¶ 8.

After the data was provided to the Settlement Administrator, it was determined that the escalator clause was not triggered. *See* Gonzalez Decl., ¶ 11.

C. Monetary Terms of the Settlement

The Settlement provides for Defendants to pay a Gross Settlement Amount of $773,360.00. Settlement, ¶ 3.1. The Net Settlement Amount is the amount remaining from the Gross Settlement Amount after deducting requested attorneys' fees ($257,786.67) and verified costs ($11,932.01), proposed Class Representative Enhancement to Plaintiffs ($7,500 each, totaling $15,000.00), Settlement Administration costs ($13,500.00), PAGA Penalties to the Labor and Workforce Development Agency ("LWDA") ($30,000.00) and PAGA Penalties to Aggrieved Employees ($10,000.00). Settlement, ¶ 1.27;

Gonzalez Decl., ¶ 12. Based on these requested amounts, the Net Settlement Amount is calculated to be approximately **$435,141.32**. Gonzalez Decl., ¶ 12.

The identified Settlement Class Members shall receive a pro rata share of the Net Settlement Amount ("NSA"). The individual Settlement Class Member's payment shall be calculated by first dividing the NSA by the total number of Workweeks worked by all Participating Class Members in order to establish the workweek amount. Settlement, ¶ 3.2.4. The workweek amount will then be multiplied by the number of Workweeks attributable to each Participating Class Member in order to determine the correct amount to be payable to each Participating Class Member. *Id*.

Additionally, $10,000.00 of the GSA is designated as PAGA Penalties to Aggrieved Employees. Settlement, ¶ 3.2.5. The identified Aggrieved Employees shall receive a pro rata share of the PAGA Penalties to Aggrieved Employees. The Individual PAGA Payment shall be calculated by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties ($10,000) by the total number of PAGA Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA Pay Periods. Settlement, ¶ 3.2.5.1.

For purposes of calculating applicable taxes and withholdings, each Individual Class Payment shall be allocated as follows: Twenty percent (20%) allocated to settlement of wage claims (the "Wage Portion"); Forty percent (40%) allocated to interest; and the remaining forty percent (40%) allocated to penalties. *See* Settlement, ¶ 3.2.4.1.

Defendants will pay the employer's share of payroll taxes separately from, and in addition to, the Gross Settlement Amount. *See* Settlement, ¶ 3.1.

D. <u>Summary of Notice Process</u>

1. Mailing of Notices

On March 3, 2026, Defendants provided Phoenix with the Class Data, data files with the following information for each Class Member: name, employee identification number, last-known mailing address, Social Security number, number of Workweeks, and number of PAGA Pay Periods. Gonzalez Decl., ¶ 3. After performing address updates and verifications, Phoenix mailed the Class Notice (consisting of the *Court Approved Notice of Class Action Settlement and Hearing Date for Final Court Approval, Workweek Challenge Form, Request for Exclusion Form,* and *Objection Form*) to the 921 Settlement Class Members and 619 Aggrieved Employees on May 14, 2026. *Id*. at ¶¶ 4-5.

Following the initial mailing, zero Class Notices were returned to Phoenix by the Post Office, meaning all Class Notices were delivered. *Id*. at ¶ 6.

The deadline for Settlement Class members to submit objections, requests for exclusion, or disputes was July 13, 2026. Gonzalez Decl., ¶¶ 7-9. As of the Response Deadline, there were two (2) requests for exclusion, no objections, and no disputes. *Id*. at ¶¶ 7-9. Accordingly, as of the date of this Motion, the participation rate amongst the Settlement Class Members is 99.7%. Gonzalez Decl., ¶ 10.

With 919 Participating Class Members, the average estimated Individual Class Payment is $473.49, with the highest estimated Individual Class Payment to a Settlement Class member being $1,134.75, and the lowest estimated Individual Class Payment to a Settlement Class member being $5.07. Gonzalez Decl., ¶ 13.

With 619 Aggrieved Employees, the average estimated Individual PAGA Payment is $16.16, with the highest estimated Individual PAGA Payment to a Settlement Class member being $26.79, and the lowest estimated Individual Class Payment to a Settlement Class member being $0.38. Gonzalez Decl., ¶ 14.

E. <u>Timing of Payments</u>

Defendants shall pay the Gross Settlement Amount and the employer's-side payroll taxes in two separate payments. *See* Settlement, ¶ 4.3. Defendants shall deposit the first payment in the amount of $386,680.00 at the time of preliminary approval or August 1, 2025, whichever is later. *Id*. Defendants shall deposit the remaining funds, $386,680.00 plus the amounts necessary to fully pay Defendants' share of payroll taxes, no later than six months after Final Approval. *Id*.

Within 21 days of the Effective Date, the Settlement Administrator will prepare and mail all Individual Class Payments and all Individual PAGA Payments, less applicable taxes and withholdings, to participating Settlement Class Members and Aggrieved Employees. *See* Settlement, ¶ 4.4. The Effective Date is six months after the date by when both of the following have occurred: (a) the Court enters a Judgment on its Order Granting Final Approval of the Settlement; and (b) the Judgement is final. Settlement, ¶ 1.18. The Judgment is final as of the latest of the following occurrences: (a) if no Participating Class Members objects to the Settlement, the day the Court enters Judgment; or (b) if one or more Participating Class Members objects to the Settlement, the day after the deadline for filing a notice of appeal from the Judgment; or if a timely appeal from the Judgment is filed, the day after the appellate court affirms the Judgment and issues a remittitur. *Id*.

The Settlement provides Settlement Class Members with 180 days from the date the Settlement Administrator mails the checks to cash such checks, and any funds remaining after 180 days escheat to the California Secretary of State-Unclaimed Property Fund under the unclaimed property laws in the name of the Settlement Class Member. Settlement ¶ 4.4.1.

F. Notice of Judgment

As stated on the Notice mailed to Settlement Class Members, the final judgment entered by the Court will be posted on the Settlement Administrator's website at fernandez-v-michael-nicholas-designs.phoenixcases.com. *See* Gonzalez Decl., Exh A.

IV. ARGUMENT

A. This Court Should Confirm its Conditional Certification of the Class for Settlement Purposes Because It Meets All of the Requirements for Class Certification Under Code of Civil Procedure § 382

Under Code of Civil Procedure section 382, a class may be certified if: (1) it is ascertainable and its members are too numerous for joinder to be practical; (2) the representative and absent class members share a community of interest, and questions of law and fact common to the class predominate over questions unique to individual class members; (3) the representative's claims are typical of the class' claims; and (4) the representative will fairly and adequately represent the class' interests. *See Richmond v. Dart Industries, Inc*. (1981) 29 Cal.3d 462, 470.

Here, this Court found that the Class meets all the requirements for class certification for settlement purposes when it granted preliminary approval of the Settlement on March 3, 2026. *See* Moore Decl., ¶¶ 28-29; Exh. A. After the Court entered an order granting preliminary approval, no events have occurred to cast doubt on the propriety of this determination. In fact, the reaction of the Settlement Class Members thus far to the Settlement has been strongly in support of the Settlement. No Settlement Class Members have objected to any portion of the Settlement and only two (2) Settlement Class members have elected to opt-out of the Settlement. *See* Gonzalez Decl., ¶¶ 7-8. This Court should therefore confirm its conditional certification of the Settlement Class.

B. This Court Should Finally Approve the Settlement Because it is a Fair, Adequate, and Reasonable Compromise of Disputed Wage and Hour Claims

California courts have a strong policy in favor of settlement. *See, e.g., Stambaugh v. Superior Court*, 62 Cal.App.3d 231, 236 (1976). Unlike individual settlements, class action settlements involve a court approval process that exists to prevent fraud, collusion, and unfairness to class members. *Malibu Outrigger Bd. of Governors v. Superior Court*, 103 Cal.App.3d 573, 578-79 (1980). This approval process consists of preliminary settlement approval, notice being given to class members, and a final fairness and approval hearing being held, at which class members have the opportunity to be heard with respect to the settlement. *Id*. Now that notice has been provided to the Settlement Class, Plaintiffs respectfully request that the Court finally approve the Settlement as fair, adequate, and reasonable.

1. The Settlement was Reached at Arm's Length, Through Experienced Counsel and An Experienced Mediator, and Was Based on Sufficient Information to Intelligently Negotiate a Fair Settlement in Light of the Claims Asserted and Risks of Continued Litigation

A settlement is presumptively fair where it is reached through arm's length bargaining, based on sufficient discovery and investigation to allow counsel and the court to act intelligently, counsel is experienced in similar litigation, and the percentage of objectors to the settlement is small. *Dunk v. Ford Motor Co.,* 48 Cal.App.4th 1794, 1802 (1996). In deciding whether to approve a proposed settlement, a trial court has broad powers to determine if the proposed settlement is fair under the circumstances of the case. *Mallick v. Superior Court,* 89 Cal.App.3d 434 (1979). In exercising these powers, the overriding concern is to ensure that a proposed settlement is "fair, adequate, and reasonable." *Dunk*, *supra*, 48 Cal.App.4th at 1801 (internal quotations omitted). Relevant factors for the Court to consider include, but are not limited:

> [T]he strength of plaintiffs' case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction of the class members to the proposed settlement.

Id. These factors require balancing, are non-exhaustive and, as such, trial courts should tailor the factors to each case and give due regard to "what is otherwise a private consensual agreement between the parties." *Id*.

"In the context of a settlement agreement, the test is not the maximum amount plaintiffs might have obtained at trial on the complaint, but rather whether the settlement is reasonable under all of the circumstances." *Wershba v. Apple Computer, Inc.,* 91 Cal.App.4th 224, 250 (2001). Because settlements inherently involve compromise, even settlements providing for substantially narrower relief than likely would be obtained if the suit were successfully litigated can be reasonable because, "the public interest may indeed be served by a voluntary settlement in which each side gives ground in the interest of avoiding litigation." *Id*. (quoting *Air Line Stewards, etc., Local 550 v. American Airlines, Inc.*, 455 F.2d 101, 109 (7th Cir. 1972)).

Here, the Settlement resulted from extensive arm's length settlement negotiations between qualified and experienced counsel, with the assistance of a well-respected mediator, and is fair, adequate, and reasonable for all Settlement Class members. While Plaintiffs maintain that their claims are meritorious, Plaintiffs acknowledge that their position includes substantial risks and uncertainty which justifies a downward departure from the maximum exposure that Plaintiffs calculated each claim carried.

As detailed in Plaintiffs' Motion for Preliminary Approval, there is significant risk of non-certification and/or not prevailing on the merits with respect to each of Plaintiffs' claims. For example, with respect to Plaintiffs' claim for failure to pay minimum and overtime wages, Defendants contend that non-exempt employees did not wait up to 30 minutes in line waiting to clock in. Moore Decl., ¶ 13. Defendants further contend that they compensated Settlement Class members for all of their time worked. *Id*. Defendants assert that Plaintiffs would be unable to certify this class given the individualized inquiries that would be required. *Id*.

As for Plaintiffs' meal period claim, Defendants contend they have always maintained a lawful meal period policy and there was no obligation to record the start and stop time of meal periods because all operations ceased during that time. Moore Decl., ¶ 15. Further, Defendants contend that they have always provided non-exempt employees with an opportunity to take legally compliant meal periods, and any non-compliant meal periods were solely the result of employee choice, rather than any policy or practice of Defendants. *Id*. Defendants point out that under *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal. 4th 1004, they are only required to "provide" the opportunity to take meal periods, not "ensure" meal periods are taken, and that they have always done so. *Id*.; See *Brinker*, *supra*, 53 Cal.4th at 1038 (rejecting "ensure" standard). Defendants argue that they had a lawful bell schedule for breaks, and that employees were instructed to report any non-compliant meals in order to receive a meal period premium. Moore Decl., ¶ 15. Finally, Defendants contend Plaintiffs' meal period claim is not suited for class certification, given that individual inquiries would be required to assess which employees took non-compliant meal periods, how many meal periods were non-compliant or missed, and the reasons why a particular employee took a non-compliant meal period or missed a meal period during a particular shift. *Id*.

As for Plaintiffs' rest period claim, Defendants counter they have always maintained and enforced lawful rest period policies and practices, and that Settlement Class Members were authorized and permitted to take all off-duty rest periods in compliance with California law. Moore Decl., ¶ 17. Defendants also argue that Plaintiffs' rest period claim is inherently unsuited for class treatment as it requires an individualized inquiry into whether each Settlement Class Member was in fact authorized and permitted to take a compliant rest period, which would devolve into an unmanageable series of mini-trials. *Id*.

In regard to Plaintiffs' wage statement claim, Defendants argue that their alleged wage statement violations could not be shown to be "knowing and intentional," and that Plaintiffs cannot show that they or any other employee "suffer[ed] injury" as a result of the alleged wage statement violations, as required by Lab. Code § 226(e) for imposition of penalties. Moore Decl., ¶ 19.

As for Plaintiffs' waiting time claim, Defendants assert they have strong defenses to the waiting time claim because there exist good-faith disputes as to Plaintiffs' underlying claims, precluding imposition of penalties. Moore Decl., ¶ 21.; *see also* 8 Cal. Code Regs. § 13520 (a "good faith dispute that any wages are due will preclude imposition of waiting time penalties"); *Kao v. Joy Holiday*, 12 Cal.App.5th 947, 963 (2017) (holding that "good faith dispute" over whether employee was exempt precluded imposition of waiting time penalties over contested wages owed).

As for Plaintiffs' claim for PAGA penalties, Defendants argue that Plaintiffs' PAGA claim will fail for the same reasons that their underlying claims will fail. Moore Decl., ¶ 23; *see Price v. Starbucks Corp*. (2011) 192 Cal.App.4th 1136, 1147 ("Because the underlying causes of action fail, the derivative UCL and PAGA claims also fail."). Defendants also maintain that, given their good faith defenses, this Court would exercise its discretion to substantially reduce any PAGA penalties if it were to find Defendants liable for any of Plaintiffs' claims. Moore Decl., ¶ 23; *See* Lab. Code § 2699(e)(2); *Thurman v. Bayshore Transit Mgmt., Inc*. (2012) 203 Cal.App.4th 1112, 1135 (affirming reduction of PAGA penalties); *Fleming v. Covidien Inc*. (C.D. Cal. 2011) Case No. ED CV10-01487 RGK (OPx), 2011 WL 7563047, at *4 (reducing PAGA penalties from $2.8 million to $500,000).

These considerations not only bore heavily on the negotiations leading to the Settlement, but also confirm that the Settlement is fair, adequate, and reasonable compromise in view of the risks of further litigation. Moore Decl., ¶ 24. As detailed in Plaintiffs' Motion for Preliminary Approval, Plaintiffs carefully vetted the claims at issue and conducted a detailed liability analysis of class-wide data to arrive at the calculated damages figures. *Id*. Thus, while these risks are far from exhaustive, they demonstrate that the Settlement is fair, adequate, and reasonable in view of them.

2. The Settlement Fairly, Reasonably, and Adequately Compensates Class Members Because Each Participating Class Member Will Be Paid Based on the Extent of His or Her Injury

Individual settlement payments will be calculated based on the number of Workweeks worked by each Settlement Class Member during the Class Period. *See* Settlement, ¶ 3.2.4. This method of distribution compensates Settlement Class Members based on the estimated extent of their injuries, as Settlement Class Members who worked more Workweeks, would have been subject to more of the alleged wage and hour violations than those who worked fewer weeks. Thus, the formula for compensating Settlement Class Members is fair, adequate, and reasonable, as it is tethered to the damages and penalties that could be recovered by them.

3. The 99.7% Participation Rate and Absence of Any Objections Further Confirms That the Settlement is Fair, Adequate, and Reasonable

Class members' response to a settlement is relevant in evaluating whether it merits final approval. *Dunk*, *supra*, 48 Cal.App.4th at 1801. The lack of objections and few requests for exclusion supports a fairness presumption. *See 7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85

Cal.App.4th 1135, 1152-53 (finding 9 objections and 80 opt-outs from a class of 5,454 showed a "particularly impressive" favorable response from class members). Here, as of the Response Deadline, not a single Settlement Class Member has objected to the Settlement and only two (2) Settlement Class Members have elected to opt-out of the Settlement. Gonzalez Decl., ¶¶ 7-8. The extremely favorable response of the Settlement Class further confirms that the Settlement is fair, adequate, and reasonable.

C. The Requested Award of Attorneys' Fees is Reasonable as a Percentage of the Common Fund Confirmed by a Lodestar Cross-Check

Plaintiffs and the Settlement Class, as the prevailing parties in settlement, are entitled to recover their attorneys' fees and costs for their wage claims. *See* Lab. Code §§ 218.5, 226(e) and 2699(g). A fee award is justified where the legal action has produced its benefits by way of a voluntary settlement. *See*, *e.g.*, *Maria P. v. Riles*, 43 Cal.3d 1281, 1290-91 (1987); *Westside Community for Independent Living, Inc. v. Obledo*, 33 Cal.3d 348, 352-53 (1983). When a settlement results in a common fund for the benefit of a class, class counsel may be awarded fees as a percentage of the common fund. *See Wershba*, *supra*, 91 Cal.App.4th at 254 (recognizing the "percentage of recovery" method).

The California Supreme Court confirmed in *Laffitte v. Robert Half Int'l, Inc.*, 1 Cal.5th 480, 506 (2016), that "[t]he percentage of fund method survives in California class action cases." Specifically, the *Laffitte* Court held:

> The recognized advantages of the percentage method—including relative ease of calculation, alignment of incentives between counsel and the class, a better approximation of market conditions in a contingency case, and the encouragement it provides counsel to seek an early settlement and avoid unnecessarily prolonging the litigation—convince us the percentage method is a valuable tool that should not be denied our trial courts.

Id. at 503 (internal citation omitted); *see also, e.g.*, *Serrano v. Priest*, 20 Cal.3d 25, 34 (1977) ("when a number of persons are entitled in common to a specific fund, and an action brought by a plaintiff or plaintiffs for the benefit of all results in the creation or preservation of that fund, such plaintiff or plaintiffs may be awarded attorney's fees out of the fund."); *Serrano v. Unruh*, 32 Cal.3d 621, 627 (1982) (in awarding a fee from the common fund obtained for the benefit of all parties, the trial court acts within its equitable power to prevent the other parties' unjust enrichment.); *Rawlings v. Prudential-Bache Properties, Inc.*, 9 F.3d 513, 516 (6th Cir. 1993) (the percentage of the fund method for calculating attorneys' fees more accurately reflects the results achieved for the putative class than the lodestar method and "establishes reasonable expectations on the part of plaintiffs' attorneys as to their expected recovery; and it encourages early settlement, which avoids protracted litigation."); *In re Rite Aid Corp. Securities Litigation*, 396 F.3d 294, 300 (3rd Cir. 2005) ("The percentage-of-recovery method is generally favored in common fund cases because it allows courts to award fees from the fund 'in a manner that rewards counsel for success and penalizes it for failure.") (citation omitted).

Laffitte also held that trial courts have discretion to assess reasonableness of fee awards with tools such as the "lodestar cross-check," whereby the trial court calculates class counsel's lodestar (hours worked multiplied by hourly rate) and determines whether the "lodestar multiplier" needed to bring the lodestar on par with the percentage of recovery is reasonable. *Laffitte* at 503-06. While a trial court may utilize the lodestar cross-check, it need not do so. *Id.* at 506 ("[w]e hold further that trial courts have discretion to conduct a lodestar cross-check on a percentage fee, as the court did here; they also retain the discretion to forgo a lodestar cross-check and use other means to evaluate the reasonableness of a requested percentage fee.")

Here, Class Counsel request an attorneys' fee award of $257,786.67 (one-third of the Gross Settlement Amount). The fee award will be split as follows: 46.5% to Haines Law Group, APC; 31% to Lidman Law, AP; and 22.5% to referring firm (Michael Burgis & Associates, P.C.). Moore Decl., ¶ 40. Plaintiffs have provided written approval of the split of attorneys' fees in this action. Moore Decl., ¶ 41.

The fee request of $257,786.67 is fair and reasonable based on a percentage of the recovery confirmed with a lodestar cross-check. First, "regardless whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery." *Chavez v. Netflix, Inc.*, 162 Cal.App.4th 43, 66, n.11 (2008); *see also*, *e.g.*, *Cicero v. DirectTV, Inc.*, No. EDCV 07-1182, 2010 WL 2991486 at * 7 (C.D. Cal. July 27, 2010) (observing that "30-50% [is] commonly awarded in cases in which the common fund is relatively small" and that in California, "courts usually award attorneys' fees in the 30-40% range in wage and hour class actions…"); *Williams v. Costco Wholesale Corp.*, No. 02-cv-2003 IEG (AJB), 2010 WL 2721452 at * 6 (S.D. Cal. July 7, 2010) (collecting cases where courts awarded between 33.33% and 40% in attorneys' fees in wage and hour class actions). This is also consistent with Class Counsel's experience in similar wage and hour class action matters. *See* Moore Decl., ¶¶ 31, 38-39. Thus, the percentage sought by Class Counsel here (the same percentage sought by class counsel in *Laffitte*) is reasonable.

Next, as stated, under the lodestar method the court computes the "lodestar" amount by multiplying the number of hours reasonably expended by each attorney or legal staff member by their reasonable hourly rates. *See, e.g., Serrano v. Priest* 20 Cal.3d 25, 48 (1977). The court then enhances this lodestar figure by a "multiplier" to account for a range of factors, such as the novelty and difficulty of the case, its contingent nature, and the degree of success achieved. *Id.* at 49; *Ketchum v. Moses*, 24 Cal.4th 1122, 1132-36 (2001); *Thayer v. Wells Fargo Bank,* 92 Cal.App.4th 819, 834 (2001) ("There is no hard-and-fast rule limiting the factors that may justify an exercise of judicial discretion to increase or decrease a lodestar calculation").

Under California law, lodestar multipliers can range from 2 to 4 or even higher. *See, e.g., Chavez*, *supra*, 162 Cal.App.4th at 49-50 (approving multiplier of approximately 2.5); *City of Oakland v. Oakland Raiders*, 203 Cal.App.3d 78 (1988) (approving multiplier of ~2.34); *Coalition for L. County Planning etc. Interest v. Bd. of Supervisors*, 76 Cal.App.3d 241, 251 (1977) (approving multiplier of ~2.04). In class actions such as this one, where the value of the benefit conferred to the class "can be monetized with a reasonable degree of certainty," a court may "adjust the lodestar in comparison to a percentage of the common fund to ensure that the fee awarded is reasonable and within the range of fees freely negotiated in the legal marketplace in comparable litigation." *Consumer Privacy Cases*, 175 Cal.App.4th 545, 557 (2009). In doing so, "the court determines, retrospectively, whether the litigation involved a contingent risk or required extraordinary legal skill justifying augmentation of the unadorned lodestar in order to approximate the fair market for such services." *Id.* at 556; *see also Laffitte*, *supra*, 1 Cal.5th at 503-05.

In this case, Class Counsel have a lodestar of **$135,847.50** which results in a multiplier of 1.89 compared to the $257,786.67 fee request. *See* Moore Decl., ¶ 36. A general summary showing the number of hours of work performed by each attorney and paralegals is set forth below. *Id.*, Exh. F. The billing rates used are reasonable especially in light of the hourly rates identified based on years of experience in the *Laffey* Matrix, submitted concurrently herewith. Moore Decl., at ¶ 37, Exh. G.

Name	Rate	Hours	Pre-Multiplier Lodestar
Scott M. Lidman (27th Year Attorney)	$950	55.6	$52,820.00
Paul K. Haines (19th Year Attorney)	$975	10.4	$10,140.00
Milan Moore (10th Year Attorney)	$725	57.5	$41,687.50
Tiara Gose-Hardy (7th Year Attorney)	$625	41.8	$26,125.00
Paralegals	$250	20.3	$5,075.00
Total Lodestar			**$135,847.50**

The fee award requested here is justified because Class Counsel achieved a significant monetary recovery for the Settlement Class in an uncertain and risky case, while bearing the substantial burdens of representation on a contingency basis, and the fees requested are in line with the market rate. *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1048-51 (9th Cir. 2002) (finding that exceptional results in a contingency case, significant risk and the absence of supporting precedents, are proper considerations in awarding attorneys' fees). First, Class Counsel negotiated a substantial recovery for the Settlement Class, resulting in a current participation rate of 99.7%, and not a single Settlement Class Member has validly objected to the Settlement or to Class Counsel's requested fees as of the Response Deadline. *See* Gonzalez Decl., ¶¶ 8, 10.

Additionally, the *average* settlement payment in this case of approximately **$473.49** is well above settlement payments in similar wage and hour class action settlements. *See*, *e.g.*, *Sorenson v. PetSmart, Inc.*, Case No. 2:06-CV-02674-JAM-DAD (E.D. Cal. 2008) (wage and hour class action settlement approved where average class member recovery was approximately $60); *Schiller v. David's Bridal, Inc.*, No. 1:10-cv-00616-AWI-SKO, 2012 WL 2117001, at *18 (E.D. Cal. 2012) (finding that average payment to class members of less than $200 was a "good" result); *Williams v. Centerplate, Inc.*, Nos. 11-CV-2159-H-KSC, 12-CV-0008-H-KSC, 2013 WL 4525428, at *4 (S.D. Cal. 2013) (granting final approval of class action settlement where average recovery for each class member was approximately $108). The fact that Class Counsel achieved these results in the face of serious defense challenges and an uncertain legal landscape confirms the strength of the results achieved.

As discussed above, this case presented significant risk as to both class certification and merits considerations. Accordingly, it is fair and reasonable to account for these risks in compensating Class Counsel. Class Counsel should also be compensated for the risks involved in undertaking this litigation and expending considerable effort, all while working on a pure contingency basis. Since undertaking representation of Plaintiffs, Class Counsel have borne all the costs of litigation without receiving any compensation for almost three years of work. Moore Decl., ¶ 35. During this time, Class Counsel have expended a total of $11,482.01 in actual costs, have devoted substantial time to this litigation, and expect to incur approximately $450.00 future costs for filing this motion, the final declaration regarding distribution of settlement, service and messenger fees, and/or postage fees.[2] *Id.*, Exh. E. Class Counsel's efforts have included pre-filing investigation, analyzing Plaintiffs' claims, conducting legal research, reviewing Defendants' documents and policies, analyzing Settlement Class Members' timekeeping data and payroll records, drafting a mediation brief, preparing for and attending mediation, negotiating and revising the memorandum of understanding, negotiating and revising the long-form Settlement, drafting the preliminary approval motion and attending the hearing, fielding calls from Class Members, communicating with the Settlement Administrator, preparing this Motion, and otherwise litigating the case. Moore Decl., ¶ 32. Moreover, Class Counsel have expended time, effort, and money that they could have expended on less risky cases instead. Moore Decl., ¶ 42. Given the considerable potential for adverse outcomes in this case, including, but not limited to losing on class certification and/or merits issues, the contingent risk borne by Class Counsel was great.

Class Counsel's previous experience in litigating wage and hour class actions also supports the reasonableness of the fee request. Class Counsel are well-versed in plaintiff and defense-side wage and hour class action litigation, with substantial experience litigating claims for minimum and overtime violations, meal and rest period violations, and other wage and hour claims and related penalties. *See* Moore Decl., ¶¶ 2-5; Declaration of Scott M. Lidman ("Lidman Decl."), ¶¶ 3-8; Declaration of Tiara Gose-Hardy ("Gose-Hardy Decl."), ¶¶ 2-4; Declaration of Paul K. Haines ("Haines Decl."), ¶¶ 2-8. They have been certified as class counsel in numerous other cases. *Id*. Their experience in similar matters was integral in evaluating the strengths and weaknesses of the case against Defendants and the reasonableness

[2] This includes total costs incurred by both law firms.

of the Settlement. *See* Moore Decl., ¶¶ 24, 34. Practice in the narrow field of wage and hour litigation requires skill and knowledge concerning the rapidly evolving substantive state and federal law, as well as the procedural law of class action litigation. Moore Decl., ¶ 34. Because it is reasonable to compensate Class Counsel commensurate with their skill, reputation, and experience, a fee award of one-third of the Gross Settlement Amount is reasonable.

Other factors also show that the fees requested in this case are reasonable under the circumstances. This case involved nuanced legal issues including questions surrounding Defendants' obligation to "provide" meal periods and "authorize and permit" rest periods, and the propriety of statutory penalties, to name just a few. Moore Decl., ¶ 34. Thus, Class Counsel's requested fee award is fair, reasonable, and adequate and should be approved.

D. The Requested Cost Amount Warrants Final Approval as Fair, Adequate, and Reasonable

Class Counsel seek to be reimbursed a total of $11,932.01 in litigation costs. Class Counsel's request is fair, adequate, and reasonable, as all of these costs are documented and reasonably incurred. *See* Moore Decl., ¶ 33; Exh. E. Moreover, the costs Plaintiffs seek are the types of costs routinely approved by courts. *See, e.g.*, *Harris v. Marhoefer*, 24 F.3d 16, 19 (9th Cir. 1994) (counsel should recover "those out-of-pocket expenses that would normally be charged to a fee paying client"); *Ashker v. Sayre*, No. 05-03759 CW, 2011 WL 825713, at * 3 (N.D. Cal. 2011)("costs of reproducing pleadings, motions and exhibits are typically billed by attorneys to their fee-paying clients" and are reimbursable); *Trustees of Const. Industry & Laborers Health and Welfare Trust v. Redland Ins. Co*., 460 F.3d 1253, 1258-59 (9th Cir. 2006) (legal research costs are reimbursable); *In re Immune Response Securities Litigation*, 497 F. Supp. 2d 1166, 1177-78 (S.D. Cal. 2007) (mediation expenses, consultant and expert fees, legal research, copies, postage, filing fees, messenger and overnight delivery costs are reimbursable). Because the expense reimbursements requested by Class Counsel were reasonably incurred, and no Settlement Class member has objected to them, Plaintiffs respectfully request the Court grant the request for actual costs incurred.

E. The Court Should Finally Approve the Requested Administration Costs

Plaintiffs also request that the Court approve $13,500.00 in administration costs to the Settlement

Administrator, Phoenix. As detailed in the declaration of Mayra Gonzalez submitted herewith, Phoenix performed duties in connection with this Settlement that were integral in effectuating the Settlement and the Notice process. *See* Gonzalez Decl., ¶ 2. Among other things, Phoenix calculated each Settlement Class Member's individual settlement and PAGA payment, updated addresses contained in the class data supplied by Defendants, formatted Notices for mailing, translated Notices to Spanish, mailed Notices to all 921 Class Members and 619 Aggrieved Employees, kept the Parties informed of any objections or requests for exclusion, and have otherwise administered the Settlement. *See* Gonzalez Decl., ¶¶ 2-15. For these reasons, Phoenix's requested costs are fair, reasonable, and adequate, and should be finally approved.

F. <u>Plaintiffs' Requested Enhancement Payments Are Fair, Adequate, and Reasonable in View of Plaintiffs' Efforts and the Risks that They Assumed on Behalf of the Class</u>

Courts routinely approve service payments to compensate named plaintiffs for the services they provide and the risks they incur during class action litigation. See, e.g., *Bell v. Farmers Ins. Exchange*, 115 Cal.App.4th 715, 726 (2004) (upholding "service payments" to named plaintiffs for their efforts in bringing the case); *Van Vranken v. Atlantic Richfield Co*., 901 F. Supp. 294 (N.D. Cal. 1995) (approving $50,000 service payment).

Here, Plaintiffs each seek an enhancement of $7,500.00 and believe this request is reasonable given Plaintiffs' efforts in this case and the risks they undertook on behalf of Class Members. Moore Decl., ¶ 43. Plaintiffs provided substantial factual information and documents to Class Counsel, attended multiple conferences with Class Counsel to discuss the claims and theories at issue in the litigation, were available for mediation, as well as undertaking significant risks by agreeing to serve as the named plaintiffs in this case. Moore Decl., ¶ 43; Declaration of Monica Fernandez ("Fernandez Decl."), ¶¶ 6-10; Declaration of Eva Zavala ("Zavala Decl."), ¶¶ 7-10. Further, Plaintiffs understood the risk that they could be liable for Defendants' costs if they lost the case and accepted this risk because they wanted Defendants to compensate their current and former employees for various wage and hour violations. Fernandez Decl., ¶ 11; Zavala Decl., ¶ 11. In addition, Plaintiffs understood that the lawsuit is a matter of public record and being part of it could stigmatize them and/or affect future employment. Fernandez Decl., ¶ 7; Zavala Decl., ¶ 7. Plaintiff Fernandez estimates she spent approximately 6-8 hours on activities related to this case. Fernandez Decl., ¶ 8. Plaintiff Zavala estimates she spent approximately 3-4 hours on activities related to this case. Zavala Decl., ¶ 8. Additionally, Plaintiffs have agreed to a general release of all claims subject to a waiver of Civil Code § 1542. Moore Decl., ¶ 43; Fernandez Decl., ¶ 10; Zavala Decl., ¶ 10.

Moreover, after receiving notice of the proposed Class Representative Enhancement Awards for Plaintiffs, no Class Member has objected to the proposed award as of the Response Date. *See* Gonzalez Decl., ¶ 8. Thus, the service awards to Plaintiffs are appropriate and justified as part of the Settlement and should be finally approved.

V. CONCLUSION

For the reasons stated herein, Plaintiffs respectfully submit that this Court should grant Plaintiffs' motion in its entirety and adopt the [Proposed] Order of Final Approval of Class Action Settlement and Final Judgment submitted herewith.

Based on the terms of the Settlement, Plaintiffs propose the deadline to file the Settlement Administrator declaration regarding the disbursement of Settlement be set for **October 8, 2027** and the compliance hearing shall be set for some date between **October 11, 2027** and **October 15, 2027**.

Dated: August 5, 2026

Respectfully submitted,
LIDMAN LAW, APC

By: Milan Moore
Milan Moore

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